THE CONFLICT OF LAWS RELATING TO BILLS AND NOTES. By ERNEST G. LORENZEN. New Haven: YALE UNIVERSITY PRESS. 1919. pp. 337.

In addition to the Bills of Exchange Act, 1882, and the other codifications in the British Empire, and the Negotiable Instrument Law in the United States, there are about forty general statutes relating to Bills of Exchange and Promissory Notes in force in Europe, Asia, and South America. The systems of law embodied in or growing out of these statutes have been classified, with reference to origin and similarity, into three groups: the Anglo-American, the German, and the French. Unfortunately this classification is more suggestive than helpful to one undertaking a detailed comparison of the systems. A critical and constructive study of the conflict of laws relating to bills and notes should be preceded by a careful study of the conflicting domestic systems. But this task would leave little leisure for the problems of the conflict of laws. Facing this dilemma Professor Lorenzen grasped at the shadow of one of the horns, and begins his book with a comparison of the Anglo-American law of bills and notes with the Uniform Law relating to bills and notes prepared by the second conference on bills of exchange held at the Hague in 1912. "Although the Convention of the Hague has not yet been ratified by any of the signatory powers it expresses nevertheless", he says, "the general point of view obtaining in foreign countries with reference to bills and notes. It may properly serve, therefore, as a basis of comparison between the Anglo-American system and that of other countries." Whether or not a comparison of the Anglo-American system with the proposed Uniform Law accomplishes the desired end is doubtful, but at any rate it is thoroughly worth while for its own sake.

Under the Uniform Law a writing to attain the form of a negotiable bill must meet, in addition to those prescribed by Anglo-American law, the following requirements: It must state in its body that it is a bill of exchange. It must state the place and day of issue and the place of payment. It may not be payable in installments, but must be payable at a single and fixed date or at or after sight. The Uniform Law, however, subtracts from the American requisites by dispensing with the necessity of words of negotiability, and from the Anglo-American by permitting the medium of payment to be the money of a country other than that in which payment is to be made. Whether clauses giving the holder an election to require something to be done in lieu of the payment of money, providing for the payment of exchange, costs of collection and attorneys' fees, sale of collateral, confession of judgment, and waivers, are permitted or forbidden, is not stated and probably would have to be determined by local law. Similarly no provision is made for the case when the writing is in terms payable to bearer; the sufficiency in point of form is left for local determination. The insertion of a statement that the bill shall not be negotiable leaves the writing in the form of a bill, but non-negotiable. Although the presence of a promise to pay interest is not objectionable, no legal obligation results from it save in the case of bills payable at or after sight.

The Uniform Law's formal requisites for acceptance preclude virtual and extrinsic acceptances. Either the usual form written on the face of the bill and signed by the drawee, or the signature of the drawee without more, is required.

As to delivery the Uniform Law contains no general provisions. Doubtless an intentional delivery is necessary to the creation of rights

against the prior parties; but a thief, finder or bailee, has a power to subject them to obligations to an innocent holder who was not careless in acquiring the bill. In both these respects the Uniform Law presents no conflict with Anglo-American law. Again no important conflict appears under the head of consideration. As would be expected, in view of the continental authorship, there is no mention of consideration in the Uniform Law. But so far as business transactions are concerned, given the same facts the legal relations of the parties are probably the same as under the Anglo-American system.

In general the scope of the obligations of the acceptor, drawer, and indorser is the same under the Uniform Law as under Anglo-American law. The obligation of the acceptor matures on the day stated for payment without grace. A drawer may not draw without recourse. Presentment for acceptance, unless the bill in terms requires it, is not a condition of the obligation of the drawer and indorser except in case of bills payable after sight. Such bills must be presented within six months after date, unless the drawer indicates a different period. It is significant that in case of dishonor by non-acceptance the Uniform Law adopts the Anglo-American rule and permits immediate recourse to drawer and indorser. But it goes beyond our law in permitting immediate recourse in the event of the drawer's bankruptcy, etc. Although no days of grace are granted, presentment for payment is sufficient if made on the day of maturity or on either of the two following business days. A bill payable at sight is payable upon presentment, and must be presented for payment within the time fixed for the presentment for acceptance of bills payable after sight. Under the Uniform Law protesting is a condition of the obligation of the drawer and indorser, but notice of dishonor is not. However, failure to give notice results in the holder being responsible for the loss, if any, caused by his omission. The Uniform Law differs from the Anglo-American system, in requiring more than diligence to make timely presentment and protest. Only *vis major* or insuperable obstacle will excuse delay. If the insuperable obstacle continues more than thirty days, presentment and protest are dispensed with.

The Uniform Law's formal requisities for a transfer by indorsement are substantially our own. However, conditional indorsements have the same consequences as if the condition were omitted. Restrictive indorsements to an agent are permitted and have the familiar legal consequences. Another kind of restrictive indorsement is also provided, *viz.*, one stating that the transfer is to the indorser by way of pledge. Such an indorsee acquires the obligations of the prior parties, though they were not obligated to his indorser, provided the pledgee took the bill in good faith. His power to transfer, however, depends upon the terms of the pledge. Professor Lorenzen thinks that such an indorsement is unknown in Anglo-American law. It is believed he is in error. The legal consequences of such an indorsement as stated in the Uniform Law, are the normal consequences of adding to a formally correct indorsement a statement sufficient to put subsequent holders upon inquiry.

The holder of a bill under such circumstances that he has no rights upon it, because of theft, fraud, etc., is given by the Uniform Law a power to subject prior parties to obligations to his innocent indorsee, of the same scope as the power of a thief, defrauding holder, etc., under Anglo-American law. But the Uniform Law goes further. The possessor of a bill which requires an indorsement for its transfer, may

forge the necessary indorsement, and then by his own indorsement invest an innocent indorsee with all the rights, etc., which he would have acquired had there been no forgery.

These, and many other similarities and differences between the Uniform Law and the Anglo-American law of bills and notes, Professor Lorenzen painstakingly sets forth in his careful comparative study.

Having completed his comparative study of the law of bills and notes, the author takes up his major task of stating the conflicting rules for determining which of several conflicting domestic rules shall be applied to an international or interstate bill of exchange. As stated in the preface, the author's purpose in this portion of the work was to pave the way for the drafting of a uniform statute governing the rules of the conflict of laws relating to bills and notes. The utility of a comparative study from this point of view ought to be obvious, but has been questioned by some reviewers of the present work, notably by Professor Beale.[1] Apparently those who question the utility of the comparative method base their argument on two grounds: (1) that our present rules governing the conflict of laws are and must continue to be based upon and deduced from certain "principles" of the "Common Law"; (2) that all law is a "living, growing thing, which may be changed in detail" but cannot be substantially altered without resulting "dismemberment and death". Whatever may be the case in other branches of the law, it is believed—so far as the first point is concerned—that Anglo-American courts to a very large extent have failed to find any satisfactory "principles" to govern their decisions upon the conflict of laws, with the result that all is chaos and confusion. In fact, the common law method of making law by the process of "judicial inclusion and exclusion" has largely broken down in this field and there seems to be no escape from our present chaos except by way of a uniform statute. The second point—relating to the organic character of law—is based apparently upon the notion that the development of human institutions is substantially, *i. e.*, except as to minor details, beyond the volitional control of those concerned. Such a view cannot, it is believed, be supported by any valid process of reasoning. In any event, it seems clear that in the main the rules of the conflict of laws are not the expression of the prevailing *mores* of society and might well be quite different without disturbing the business community.[2] This being so, a comparative study of the kind presented in the work under consideration seems well worth while.

Only one well versed in foreign systems of the conflict of laws can pass judgment upon the accuracy of Professor Lorenzen's statements of the rules of those systems, but in view of the general correctness with which the Anglo-American law is stated, we may conclude that in this respect the author may be relied upon. It is, however, a source of some regret that the work is marred by an acceptance of the loose analysis found in much current legal writing. Like most of us, Professor Lorenzen has been content to get along without any analysis of fundamental legal conceptions and without discriminating carefully between the legal and non-legal elements in situations. "Promises" are spoken of as "implied[3] when all that is meant is that, although no promises in fact were made, the legal consequences are the same as though

[1] 32 Harvard Law Rev. 983.

[2] See the excellent discussion of this point in 29 Yale Law Journal, 478.

[3] Page 126.

they had been so made. Similarly, a suggested rule that "all parties *must be deemed to have contracted* with reference to the place of issue of the original instrument"[4] is merely a fictitious way of providing that the same legal results shall attach as though the persons in question had so contracted. Again, the statement that "before there can be a legal intent, there must be capacity to form such intent, and such capacity must, in the very nature of things, be conferred by the law", seems to involve a similar blending of legal and non-legal elements.[5] The word "capacity" may denote either (1) a group of facts which when it exists confers upon the person of whom the facts are true a certain legal power, *i. e.*, a legal ability, to bring about by his acts certain changes in legal relations; or (2) this legal power itself. "Capacity" in the former sense is obviously not "conferred by the law" but exists, if at all, as a fact; "capacity" in the second sense, *i. e.*, that of legal power, is, on the other hand, "conferred by the law" (*i. e.*, is attached by the law to "capacity" in the former sense) but does not enable one to "form an intent", but rather by forming it (and expressing it in a certain way) to produce certain changes in legal relations. Numerous other instances might be cited, but these will suffice to illustrate what is meant.

The thanks of the profession are due to Professor Lorenzen for the present study and it is to be hoped that it will be followed by similar studies treating comparatively other portions of the conflict of laws.

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[4]Page 127.

[5]See page 59.

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